

House File 657 - Introduced

HOUSE FILE 657
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 426)

A BILL FOR

1 An Act relating to the preservation of biological evidence
2 collected in relation to a criminal investigation, testimony
3 by an incarcerated witness, and postconviction access to
4 investigative files in a criminal case.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PRESERVATION OF BIOLOGICAL EVIDENCE IN CRIMINAL INVESTIGATIONS

Section 1. Section 81.1, Code 2023, is amended by adding the following new subsections:

NEW SUBSECTION. 01. "*Agency*" means any governmental or public entity within the state and its officials or employees including but not limited to law enforcement agencies, county attorney offices, courts, public hospitals, the state criminalistics laboratory or similar qualified laboratory, and any other entity or individual charged with the collection, storage, or retrieval of biological evidence.

NEW SUBSECTION. 1A. "*Biological evidence*" means any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of a criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. This applies to material that is cataloged separately or is present on other evidence including but not limited to clothing, ligatures, bedding or other household materials, drinking cups, or cigarettes.

NEW SUBSECTION. 1B. "*Custody*" means a person who has been arrested, is currently incarcerated, has been civilly committed, is on parole or probation, or who is subject to sex offender registration requirements.

Sec. 2. NEW SECTION. 81.5A **Preservation of biological evidence.**

1. Except as provided in section 709.10 concerning the gathering and preservation of sexual abuse evidence collection kits, all biological evidence collected involving a felony or aggravated misdemeanor in an agency's possession or control shall be preserved and stored by the agency as follows:

a. For cases resulting in a conviction or a deferred judgment, biological evidence shall be retained for the latter of either of the following:

1 (1) Twenty years from the date the defendant's conviction
2 becomes final.

3 (2) The period of time that the defendant or a codefendant
4 remains in custody.

5 *b.* Except as provided in section 81.9, for cases not
6 resulting in a conviction, biological evidence shall be
7 preserved and stored until the expiration of the statute of
8 limitations for the alleged offense.

9 *c.* A criminal or juvenile justice agency, as defined in
10 section 692.1, shall retain biological evidence as provided in
11 section 81.13, subsection 2.

12 2. The agency shall retain biological evidence in an amount
13 and a manner sufficient to develop a DNA profile from the
14 biological material contained in or included on the evidence
15 and in a manner reasonably calculated to prevent contamination
16 or degradation of any biological evidence that might be
17 present, subject to a continuous chain of custody, and securely
18 retained with sufficient official documentation to locate the
19 evidence.

20 3. All records documenting the possession, control,
21 storage, and destruction of biological evidence related to a
22 criminal investigation or prosecution of an offense referenced
23 in this section shall be retained.

24 4. Upon written request by a defendant, the agency shall
25 prepare an inventory of biological evidence relevant to the
26 defendant's case that is in the custody of the agency.

27 5. If evidence was destroyed in accordance with section
28 81.5B through a court order or other written directive,
29 the agency shall provide the defendant with a copy of the
30 documentation showing adherence with this section, the court
31 order, or the written directive.

32 6. The agency shall not be required to preserve physical
33 evidence on which biological evidence is found that is of such
34 a size, bulk, or physical character as to render retention
35 impracticable. When such retention is impracticable, a portion

1 of the physical evidence likely to contain biological evidence
2 shall be removed in a quantity sufficient to permit future DNA
3 testing before returning or disposing of the remainder of the
4 physical evidence.

5 7. Biological evidence shall not be destroyed when
6 a codefendant, convicted of the same crime, remains in
7 custody, and the agency shall preserve the evidence until all
8 codefendants are released from custody.

9 Sec. 3. NEW SECTION. 81.5B Destruction of biological
10 evidence.

11 Except as provided in section 709.10 concerning the
12 gathering and preservation of sexual abuse evidence collection
13 kits, an agency may destroy or dispose of DNA samples before
14 the period required in section 81.5A expires if all of the
15 following apply:

16 1. No other provision of federal or state law requires the
17 agency to preserve the biological evidence.

18 2. *a.* The agency sends a notice of intent to dispose
19 of biological evidence by certified mail, return receipt
20 requested, or by a delivery service that provides proof of
21 delivery, to the following:

22 (1) Any victim as defined in section 915.10.

23 (2) Any individual who remains in custody based on a
24 criminal conviction related to the biological evidence.

25 (3) The private attorney or public defender of record for
26 each individual related to the evidence.

27 (4) If applicable, the prosecuting agency responsible for
28 the prosecution of each individual relating to the biological
29 evidence.

30 (5) If applicable, the office of the attorney general.

31 *b.* The notification of intent to dispose of biological
32 evidence shall include that the evidence may be destroyed one
33 hundred eighty days after the date on which the agency received
34 proof of delivery of the notice unless the notified party does
35 either of the following:

1 (1) Files an application for DNA profiling under section
2 81.11.

3 (2) Submits a written request to the agency that the
4 biological evidence be retained.

5 Sec. 4. NEW SECTION. 81.5C Noncompliance with preservation
6 requirements.

7 1. Following a request to produce biological evidence, an
8 agency that is unable to produce biological evidence that is
9 required to be preserved under section 81.5A shall provide an
10 affidavit describing the efforts taken to locate the biological
11 evidence and affirm that the biological evidence could not be
12 located.

13 2. If the court finds that biological evidence was not
14 preserved in accordance with section 81.5A, the court may
15 conduct a hearing and impose appropriate sanctions and order
16 appropriate remedies.

17 DIVISION II

18 INCARCERATED WITNESS TESTIMONY

19 Sec. 5. NEW SECTION. 804A.1 Definitions.

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "*Benefit*" means any plea bargain, bail consideration,
23 reduction or modification of sentence, or any other leniency,
24 immunity, financial payment, reward, or amelioration of current
25 or future conditions of a sentence that is requested, provided,
26 or will be provided in the future in connection with, or in
27 exchange for, the testimony of a incarcerated witness.

28 2. "*Incarcerated witness*" means a person who provides
29 testimony, or who intends to provide testimony, during a
30 criminal prosecution regarding statements made by a suspect or
31 defendant while both the witness and the suspect or defendant
32 were incarcerated, and who has requested, has been offered, or
33 may in the future receive a benefit in connection with such
34 testimony. "*Incarcerated witness*" does not include a person who
35 is a confidential informant, codefendant, percipient witness,

1 accomplice, or coconspirator in the criminal prosecution.

2 Sec. 6. NEW SECTION. 804A.2 Transparency in the use of
3 incarcerated witness testimony.

4 1. In any criminal prosecution, not less than ninety days
5 prior to a trial, the prosecuting attorney shall disclose its
6 intent to introduce the testimony of an incarcerated witness
7 regarding statements made by a suspect or defendant, while such
8 witness and suspect or defendant were both incarcerated. The
9 prosecuting attorney shall provide to the defense all of the
10 following:

11 a. The criminal history of the incarcerated witness,
12 including any pending or dismissed criminal charges.

13 b. The incarcerated witness's cooperation agreement and any
14 benefit that has been requested by, provided to, or will be
15 provided in the future to the incarcerated witness.

16 c. The contents of any statement allegedly given by the
17 suspect or defendant to the incarcerated witness and the
18 contents of any statement given by the incarcerated witness
19 to law enforcement regarding the statements allegedly made by
20 the suspect or defendant, including the time and place such
21 statements were given.

22 d. Any information regarding the incarcerated witness
23 recanting testimony or statements, including the time and place
24 of the recantation, the nature of the recantation, and the
25 names of the people present at the recantation.

26 e. Any information concerning other criminal cases in
27 which the testimony of the incarcerated witness was introduced
28 or was intended to be introduced by a prosecuting attorney
29 regarding statements made by a suspect or defendant, including
30 any cooperation agreement and any benefit that the incarcerated
31 witness received in such case.

32 2. The court may permit the prosecuting attorney to
33 comply with the provisions of this section after the time
34 period provided in subsection 1 if the court finds that the
35 incarcerated witness was not known or the information described

1 in subsection 1 could not be discovered or obtained by the
2 prosecuting attorney exercising due diligence within the time
3 period.

4 3. If the court finds that disclosing the information
5 described in subsection 1 is likely to cause bodily harm to the
6 incarcerated witness, the court may do any of the following:

7 a. Order that such evidence be viewed only by the defense
8 counsel and not by the defendant or others.

9 b. Issue a protective order.

10 4. If the testimony of an incarcerated witness is admitted
11 into evidence, the jury shall be instructed that such testimony
12 was provided by an incarcerated witness and informed of any
13 benefit that has been requested by, provided to, or will
14 be provided in the future to the incarcerated witness in
15 connection with providing such testimony.

16 Sec. 7. NEW SECTION. 804A.3 Pretrial hearing —
17 incarcerated witness testimony.

18 1. In a criminal prosecution in which the prosecuting
19 attorney intends to introduce the testimony of an incarcerated
20 witness, upon motion of the defendant, the court shall conduct
21 a pretrial hearing to determine whether the incarcerated
22 witness's testimony exhibits reliability and is admissible
23 based on the following factors:

24 a. The extent to which the incarcerated witness's testimony
25 is confirmed by other evidence.

26 b. The specificity of the testimony.

27 c. The extent to which the testimony contains details that
28 would be known only by the perpetrator of the offense.

29 d. The extent to which the details of the testimony could be
30 obtained from a source other than the suspect or defendant.

31 e. The circumstances under which the incarcerated witness
32 provided the information to the prosecuting attorney or a law
33 enforcement officer, including whether the incarcerated witness
34 was responding to leading questions.

35 2. If the prosecuting attorney fails to show by a

1 preponderance of the evidence that an incarcerated witness's
2 testimony is reliable, the court shall exclude the testimony at
3 trial.

4 **Sec. 8. NEW SECTION. 804A.4 Tracking the use of**
5 **incarcerated witness testimony.**

6 1. A prosecuting attorney's office shall maintain a central
7 record containing all of the following:

8 a. Any case in which testimony by an incarcerated
9 witness was introduced or was intended to be introduced by a
10 prosecuting attorney regarding statements made by a suspect or
11 defendant and the substance of such testimony.

12 b. Any benefit that was requested by, provided to, or
13 will be provided in the future to an incarcerated witness in
14 connection with testimony provided by the witness.

15 2. Each prosecuting attorney's office shall forward the
16 information described in subsection 1 to the division of
17 criminal investigation of the department of public safety. The
18 division shall maintain a statewide database containing the
19 information forwarded pursuant to this section. The database
20 shall be accessible only to prosecuting attorneys and shall
21 otherwise remain confidential and not subject to open records
22 requests.

23 3. If an incarcerated witness receives any benefit in
24 connection with offering or providing testimony against a
25 defendant, the prosecuting attorney shall notify any victim
26 connected to the crime for which the witness was incarcerated.

27 DIVISION III

28 POSTCONVICTION ACCESS TO INVESTIGATIVE FILES IN CRIMINAL CASES

29 **Sec. 9. NEW SECTION. 701.13 Postconviction file access —**
30 **discoverable materials.**

31 1. For purposes of this section, "file" means all papers,
32 documents, statements, photographs, or tangible objects in
33 the possession, custody, or control of the state including
34 any results or reports of physical or mental examinations and
35 of scientific tests or experiments made in connection with a

1 particular criminal case.

2 2. Except as provided in subsection 3, a prosecuting
3 attorney shall make available to a defendant who has been
4 convicted of a felony or an aggravated misdemeanor, any
5 file in the possession of a law enforcement agency, county
6 attorney, or the attorney general in this state involved in
7 the investigation of any felony or aggravated misdemeanor
8 committed by the defendant relating to the prosecution of the
9 defendant that the defendant was entitled to at the time of the
10 defendant's trial.

11 3. In all criminal cases involving a conviction for a felony
12 or an aggravated misdemeanor, all of the following shall apply:

13 a. Except as provided in subsection 4, a defendant's
14 previous trial or appellate attorney shall securely retain a
15 copy of the defendant's file for seven years after completion
16 or termination of representation of the defendant or until the
17 completion of the defendant's term of imprisonment, whichever
18 occurs first. An electronic copy is sufficient only if an
19 entire file can be digitally copied and preserved.

20 b. A defendant's file may be maintained by electronic,
21 photographic, or other media provided that printed copies may
22 be produced and the records are readily accessible to the
23 defendant's previous trial or appellate attorney.

24 c. A defendant's previous trial or appellate attorney shall
25 make available to the defendant or the defendant's current
26 attorney the complete file relating to the prosecution of the
27 defendant.

28 4. a. A defendant's previous trial or appellate attorney
29 may destroy the defendant's file prior to the end of the term
30 of retention described in subsection 3 if the attorney receives
31 written or electronically recorded consent from the defendant.
32 The written or electronic record of the consent to destruction
33 shall be maintained by the attorney for a period of at least
34 six years after completion or termination of representation or
35 the end of the defendant's sentence, whichever occurs first.

1 *b.* Items in the file of monetary value shall not be
2 destroyed.

3 *c.* A defendant's previous trial or appellate attorney
4 destroying a file pursuant to this subsection shall securely
5 store items of intrinsic value or deliver such items to the
6 state unclaimed property agency.

7 *d.* The file shall be destroyed in a manner that preserves
8 client confidentiality.

9 5. A defendant's previous trial or appellate attorney shall
10 not destroy a file pursuant to subsection 4 if the attorney
11 knows or reasonably should know any of the following:

12 *a.* A legal malpractice claim is pending related to the
13 representation.

14 *b.* A criminal or other governmental investigation is pending
15 related to the representation.

16 *c.* A complaint is pending before the Iowa attorney
17 disciplinary board related to the representation.

18 *d.* Other litigation is pending related to the
19 representation.

20 6. If a prosecuting attorney has a reasonable belief
21 that allowing inspection of any portion of the defendant's
22 file by a defendant's current attorney would place a person
23 in imminent danger, the prosecuting attorney may submit any
24 portion of the file so identified for inspection by the court.
25 If upon examination of the file the court finds that the
26 submitted portion of the file would not assist the defendant
27 in investigating, preparing, or presenting a motion for any
28 appropriate relief, the court may in its discretion allow the
29 prosecutor to withhold that portion of the file.

30 7. A defendant, the defendant's current attorney,
31 investigator, expert, consulting legal counsel, or other agent
32 of the attorney representing the defendant shall not disclose
33 to a third party any file received from the prosecuting
34 attorney under this section that is prohibited from public
35 disclosure unless any of the following apply:

1 subject to a continuous chain of custody, and securely retained
2 with sufficient official documentation to locate the evidence.

3 The bill provides that upon written request by a defendant,
4 the agency shall prepare an inventory of biological evidence
5 relevant to the defendant's case that is in the custody of the
6 agency. If biological evidence was destroyed in accordance
7 with the bill through a court order or other written directive,
8 the agency shall provide the defendant with a copy of the
9 documentation showing adherence with the new Code section, the
10 court order, or the written directive.

11 The bill provides that the agency shall not be required
12 to preserve physical evidence on which biological evidence
13 is found that is of such a size, bulk, or physical character
14 as to render retention impracticable. A portion of the
15 physical evidence likely to contain biological evidence shall
16 be removed in a quantity sufficient to permit future DNA
17 testing before returning or disposing of the remainder of the
18 physical evidence. Biological evidence shall not be destroyed
19 when a codefendant, convicted of the same crime, remains in
20 custody, and the agency shall preserve the evidence until all
21 codefendants are released from custody.

22 The bill provides that the agency may destroy or dispose
23 of a DNA sample before the period required expires if no
24 other provision of federal or state law requires the agency
25 to preserve the biological evidence and the agency sends a
26 notice of intent to dispose of biological evidence by certified
27 mail, return receipt requested, or by a delivery service that
28 provides proof of delivery to any victim, any individual who
29 remains in custody based on a criminal conviction related
30 to the biological evidence, the private attorney or public
31 defender of record for each individual related to the
32 biological evidence, and, if applicable, the prosecuting agency
33 responsible for the prosecution of each individual relating to
34 the biological evidence and the attorney general. A notified
35 person may file an application for DNA profiling or submit a

1 written request to the agency that the biological evidence be
2 retained.

3 The bill provides that an agency that receives a request
4 to produce biological evidence that the agency is unable to
5 produce shall provide an affidavit describing the efforts
6 taken to locate the biological evidence and affirm that
7 the biological evidence could not be located. If the court
8 finds that biological evidence was not preserved as required
9 under the bill, the court may conduct a hearing and impose
10 appropriate sanctions and order appropriate remedies.

11 The bill defines "agency", "biological evidence", and
12 "custody".

13 DIVISION II — INCARCERATED WITNESS TESTIMONY. The
14 bill provides that in any criminal prosecution, not less
15 than 90 days prior to a trial, the prosecuting attorney
16 shall disclose its intent to introduce the testimony of an
17 incarcerated witness regarding statements made by a suspect or
18 defendant, while such witness and suspect or defendant were
19 both incarcerated. The prosecuting attorney shall provide to
20 the defense all of the following: the criminal history of
21 the incarcerated witness, including any pending or dismissed
22 criminal charges; the incarcerated witness's cooperation
23 agreement and any benefit that has been requested by, provided
24 to, or will be provided in the future to the incarcerated
25 witness; any statement allegedly given by the suspect or
26 defendant to the incarcerated witness and any statement given
27 by the incarcerated witness to law enforcement regarding the
28 statements allegedly made by the suspect or defendant; any
29 information regarding the incarcerated witness recanting
30 testimony or statements; and any information concerning other
31 criminal cases in which the testimony of the incarcerated
32 witness was introduced or was intended to be introduced by a
33 prosecuting attorney. The bill provides that the court may
34 permit the prosecuting attorney to comply with the duty to
35 disclose the prosecuting attorney's intent to introduce the

1 testimony of an incarcerated witness after the 90-day time
2 period if the court finds that the incarcerated witness was not
3 known or the information described could not be discovered or
4 obtained by the prosecuting attorney exercising due diligence
5 within the 90-day time period.

6 The bill provides that if the court finds that disclosing
7 the information described in the bill is likely to cause bodily
8 harm to the incarcerated witness, the court may order that such
9 evidence be viewed only by the defense counsel or may issue a
10 protective order. If the testimony of an incarcerated witness
11 is admitted into evidence, the jury shall be instructed that
12 such testimony was provided by an incarcerated witness and
13 informed of any benefit that has been requested by, provided
14 to, or will be provided in the future to the incarcerated
15 witness in connection with providing such testimony.

16 The bill provides that in a criminal prosecution in which
17 the prosecuting attorney intends to introduce the testimony
18 of an incarcerated witness, upon motion of the defendant, the
19 court shall conduct a pretrial hearing to determine whether
20 the incarcerated witness's testimony exhibits reliability and
21 is admissible based on the following factors: the extent to
22 which the incarcerated witness's testimony is confirmed by
23 other evidence; the specificity of the testimony; the extent
24 to which the testimony contains details that would be known
25 only by the perpetrator of the offense; the extent to which the
26 details of the testimony could be obtained from a source other
27 than the suspect or defendant; and the circumstances under
28 which the incarcerated witness provided the information to the
29 prosecuting attorney or a law enforcement officer. If the
30 prosecuting attorney fails to show by a preponderance of the
31 evidence that an incarcerated witness's testimony is reliable,
32 the court shall exclude the testimony at trial.

33 The bill requires that each prosecuting attorney's office
34 shall maintain a central record containing any case in which
35 testimony by an incarcerated witness was introduced or was

1 intended to be introduced regarding statements made by a
2 suspect or defendant and the substance of such testimony, and
3 any benefit that was requested by, provided to, or will be
4 provided in the future to an incarcerated witness in connection
5 with testimony provided by the witness. A prosecuting
6 attorney's office shall forward the information to the division
7 of criminal investigation of the department of public safety.
8 The division shall maintain a statewide database containing
9 the information forwarded. The database shall be accessible
10 only to prosecuting attorneys and shall otherwise remain
11 confidential and not subject to open records requests. If
12 an incarcerated witness receives any benefit in connection
13 with offering or providing testimony against a defendant, the
14 prosecuting attorney shall notify any victim connected to the
15 crime for which the witness was incarcerated.

16 The bill defines "benefit" and "incarcerated witness".

17 DIVISION III — POSTCONVICTION ACCESS TO INVESTIGATIVE FILES
18 IN CRIMINAL CASES. The bill provides that the prosecuting
19 attorney shall make available to a defendant, who has been
20 convicted of a felony or an aggravated misdemeanor, the
21 file in the possession of any law enforcement agency, county
22 attorney, or the attorney general in this state involved
23 in the investigation of the public offenses committed by
24 the defendant or the prosecution of the defendant which the
25 defendant was entitled to at the time of the defendant's trial.
26 If the prosecuting attorney has a reasonable belief that
27 allowing inspection of any portion of the file by a defendant's
28 current attorney would place a person in imminent danger,
29 the prosecuting attorney may submit any portion of the file
30 identified for inspection by the court. If upon examination
31 the court finds that the submitted portion of the file would
32 not assist the defendant in investigating, preparing, or
33 presenting a motion for appropriate relief, the court in its
34 discretion may allow the prosecutor to withhold that portion
35 of the file.

1 The bill provides that in all criminal matters involving
2 a conviction for a felony or aggravated misdemeanor, a
3 defendant's previous trial or appellate attorney shall securely
4 retain a copy of the defendant's file for seven years after
5 completion or termination of representation of the defendant or
6 until the completion of the defendant's term of imprisonment,
7 whichever occurs first. An electronic copy is sufficient only
8 if an entire file can be digitally copied and preserved. A
9 defendant's file may be maintained by electronic, photographic,
10 or other media provided that printed copies may be produced and
11 the records are readily accessible to the defendant's previous
12 trial or appellate attorney. A defendant's previous trial or
13 appellate attorney shall make available to the defendant or the
14 defendant's current attorney the complete file relating to the
15 prosecution of the defendant.

16 The bill provides that the defendant's previous trial or
17 appellate attorney may destroy the defendant's file prior to
18 the end of the required term of retention if the attorney
19 receives written or electronically recorded consent from the
20 defendant. The written or electronic record of the consent
21 to destruction shall be maintained by the attorney for a
22 period of at least six years after completion or termination
23 of representation or the end of the defendant's sentence,
24 whichever occurs first. Items in the file of monetary value
25 shall not be destroyed. A defendant's previous trial or
26 appellate attorney destroying a file shall securely store items
27 of intrinsic value or deliver such items to the state unclaimed
28 property agency. The file shall be destroyed in a manner that
29 preserves client confidentiality.

30 The bill provides that a defendant's previous trial or
31 appellate attorney shall not destroy a file prior to the
32 end of the required term of retention if the attorney knows
33 or reasonably should know that a legal malpractice claim
34 is pending related to the representation; a criminal or
35 other governmental investigation is pending related to the

1 representation; a complaint is pending before the Iowa attorney
2 disciplinary board related to the representation; or other
3 litigation is pending related to the representation. If a
4 prosecuting attorney has a reasonable belief that allowing
5 inspection of any portion of the defendant's file by a
6 defendant's current attorney would place a person in imminent
7 danger, the prosecuting attorney may submit any portion
8 for inspection by the court. If the court finds that the
9 submitted portion of the file would not assist the defendant
10 in investigating, preparing, or presenting a motion for any
11 appropriate relief, the court may in its discretion allow the
12 prosecuting attorney to withhold that portion of the file.

13 The bill provides that the defendant, the defendant's
14 attorney, investigator, expert, consulting legal counsel, or
15 other agent of the attorney representing the defendant shall
16 not disclose to a third party any file received from the
17 prosecuting attorney that is prohibited from public disclosure
18 unless a court orders the disclosure of the file upon a showing
19 of good cause after notice and a hearing to consider the
20 security and privacy interests of a victim or witness, or the
21 file has already been publicly disclosed.

22 The actual costs involved in the examination or copying of
23 any file disclosed shall be reimbursed by the defendant. The
24 bill does not require the retention of any file not otherwise
25 required by law or court order.

26 The bill defines "file" as papers, documents, statements,
27 photographs, or tangible objects in the possession, custody,
28 or control of the state including any results or reports of
29 physical or mental examinations and of scientific tests or
30 experiments made in connection with a particular case.